

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

Tony Fountain #152157

2006 JUL 25 A 9:30

plaintiff,

DEBRA J. FOUNTAIN  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA

Case No. 2:06-CV-548-MHT

VS.

DR. PEASANT, et al,  
Defendants.

MOTION TO RECALL PURSUANT  
TO 18 U.S.C. 1623(d), AND TO STATE  
THE TRUTH OF THE MATTER AT TIME  
OF FILING

Comes now, Tony Fountain, by and through himself herein, Moves the Court to "accept" his recantation of the sum of \$24.71 in his Affidavit of Hardship, Pursuant to 18 U.S.C. 1623(d), And the truth of the matter at the time of Filing. Plaintiff asserts the following facts in support of his Motion to wit:

1). Plaintiff contends that his first thought after receiving this Court order of July 14 2006 and reviewing his initial Filing was "Oh My God, I

See now what the Magistrate was trying to get me to see all along. in her order of July 5<sup>th</sup> 2006. plaintiff stress the facts that he did mis-quoted his p.m.o. & account sum of being \$24.71, not only did I inadvertently omitted ".32" from this sum I placed my period/commas in the wrong place. Mistake. Instead of it being wrote out as \$24.71.32 it should have been wrote out as \$2,471.32 or \$2471.32. plaintiff contends out of the whole time he didn't catch this mistake until July 19 2006 after borrowing another inmate glasses.

2). plaintiff points back to his original filing (his Complaint), that's one of his claims were about his eye-sight going bad. And that this honest mistake was a prime example of the urgency of his petition for an EMERGENCY injunction, in reference to him been denied adequate medical treatment. Estelle v. Gamble 429 U.S. 251. To the point that plaintiff had to borrow another inmate glasses in order to be able to read what he had wrote and to be able to catch the

Mistake he made in his affidavit of hardship. Plaintiff contends the inadequate medical treatment that he's received from the defendants is what prompted him to seek an injunction in the first place.

3). And the facts that he has a right pursuant to 18 U.S.C. 1623 (d), to correct any false statement made by him in a court. Plaintiff stress the facts that on June 15<sup>th</sup> 2006 the date he signed his affidavit of hardship he had a sum of \$ 2,471.32 in his P.M.O.D. account. And that his Exhibit-C was a canteen receipt that he received after purchasing a few items from the prison canteen on June 14 2006. A day before which was on a Wednesday, he turned over his legal papers to the prison authorities (original, petition for an emergency injunction to affidavit of hardship) for the purpose of mailing on June 15 2006 which was that Thursday. Huston v. Hack 101 U.S. 2d. 245 And at that time to the best of his knowledge he only had a total

OF \$ 2471.32 in his p.m.o.d. account and not \$ 2,483.03 as were mentioned by the Magistrate in her order of July 5<sup>th</sup> & 14<sup>th</sup> 2006. See United States v. Morelli (1973, S.D. Ohio) 373 F. Supp. 458

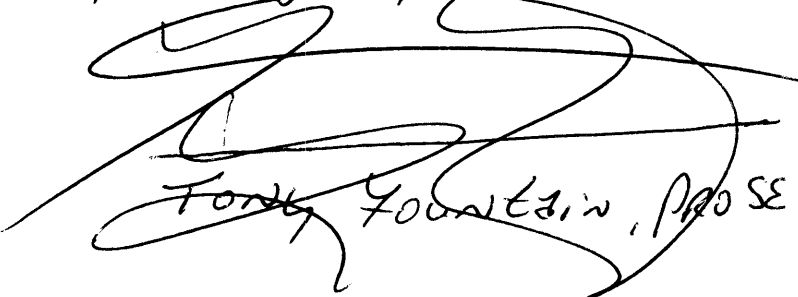
4). Furthermore, plaintiff contends the defendant's and their agents working in direct concert with them, who was the source of the Court Document (Doc. No. 5) made reference to by the Magistrate in her order of July 5<sup>th</sup> & 14<sup>th</sup> 2006 was an attempt to mislead the plaintiff and this Honorable Court. In-order to substantiate this the plaintiff submits a copy of the print-out of his p.m.o.d. account along with his Request for such on June 26, 2006. That was returned to him from the prison business office during the afternoon hours of June 26, 2006 marked as his Exhibit-E. Plaintiff stress the fact that his Exhibit-E is not the exact same document that was submitted to the Court by some unknown source marked as this Court document Doc. No. 5. Other than the plaintiff. The document (p.m.o.d. account - print-out) returned to plaintiff by the prison

business office in response to his Request of June 26 2006 requesting such informations shows on June 4/<sup>2005</sup> plaintiff average daily Balance was \$ 22,006.70, the Court document (Doc. No. 5) submitted by an unknown source shows June 7 2005 plaintiff had an average daily Balance of \$ 12,590.93. Now by reasons and logic someone deliberately misrepresented my P.M.O. account, point being that in a three (3) days period from June 4 to June 7 2005. plaintiff average daily Balance jumped from \$ 22,006.70 to an average daily Balance of \$ 12,590.93 just in three (3) days. Again plaintiff points out the facts that the Court document submitted by an unknown source other than plaintiff (Doc. No. 5) also shows June 23 2006 plaintiff average daily Balance of \$ 2,483.03, and the print-out returned to the plaintiff from the prison business office marked as his Exhibit-E in response to his Request shows his average daily Balance was \$ 2,474.79 and it also shows a three (3) days difference between the Court Document (Doc. No. 5) submitted by an unknown source and in the one returned to the plaintiff by

Prison business office during Afternoon hours of June 26 2006 in Response to his Request. (Plaintiff, Exhibit - E). In other words the plaintiff contends the different between these two print-out point back and substantiate the Response of the business Manager Ms. Baxley in the Plaintiff Exhibit - A. That states "Daily average balance does not equal an actual balance". Therefore this some what substantiates my Contentions that on June 15 2006, I did not and could not have had a total sum of \$ 2,483.03 in my P.M.O.D. Account. NOR did I ever had in my P.M.O.D. Account the sum of \$ 12,590.93 at no point in time since my incarceration have I had that type of money. Plaintiff, propose the question to court "Why the document (Doc. No. -5) Submitted to this Court by an unknown source is not the same as the one returned from the Prison business office to plaintiff not one and the same?" Again plaintiff apologize to the Court for Mistakenly placing the sum of \$124.71 in his affidavit of hardship, and that it was not did intentionally to mislead this Court.

Wherefore, plaintiff prays that (s) his Motion of Recantation and the truth of the matter at the time of filing be accepted by the Court as law and justice requires.

Done this 21<sup>th</sup> day of July 2006.

  
Tony Fountain, PRO SE

## CERTIFICATE OF SERVICE

I hereby, Certify, that I have served a true and correct copy of the same as addressed: Office of The Attorney General / 11<sup>th</sup> South Union Street, Montgomery, AL 36130 by placing the same in the U.S. Mail on this 21<sup>th</sup> day of July 2006.

Sincerely

